IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.9191 of 2001
Date of Decision: December 21, 2007

Sudesh Kumar Gupta .....Petitioner

Versus

State Bank of Patiala and others .....Respondent

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE MOHINDER PAL

Present: Shri Akshay Bhan, Advocate, for the petitioner.

Shri H.N. Mehtani, Advocate, for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The petitioner is Middle Management Group-Scale III Officer posted as Manager Concurrent Audit in the respondent-Bank. The petitioner was initially appointed on 19.5.1971.

The petitioner is governed by the State Bank of Patiala (Officers) Service Regulations, 1979. The Indian Banks' Association, of which the respondent-Bank is a member, evolved a Scheme called Voluntary Retirement Scheme after getting approval from the Government of India and advised the member-Banks to implement the same so as to curtail the staff's strength in the Bank. The respondent-Bank has also circulated the Scheme. The Scheme was to remain open during the period 15.2.2001 to 01.03.2001 with an option to the Bank to close early/extend

the Scheme, without assigning any reasons. The applications for voluntary retirement under the State Bank of Patiala Voluntary Retirement Scheme (hereinafter referred to as `the Scheme') was to be accepted during this period only.

The petitioner applied for voluntary retirement under the Scheme. Clause 8 of the Scheme which is relevant for determination of the issues raised in the present case, reads as under:-

> "Other Features.
>
> The Bank intends to control the outflow of personnel according to its requirements. Towards this end, Bank retains the discretion to limit the number of employees to be allowed to retire in each category of staff viz. officer/clerical-cash/subordinate, to be covered, under SBPVRS. As such the bank will have the sole discretion as to the acceptance or the rejection of the request for retirement under SBPVRS depending upon the requirements of the Bank. For the purpose of exercising discretion in this regard, category wise lists of eligible applicants would be prepared in descending order of their age and applications of employees coming in higher age groups above cut-off age would be accepted; the cut-off age in each category will of course depend upon the acceptable number of employees who can be permitted to retire.
>
> No voluntary retirement shall be deemed to have come into effect unless the decision of the competent

authority has been communicated in writing, which will be conveyed within a maximum period of two months after the date of closure of receipt of applications i.e. (01.03.2001)."

The grievance of the petitioner is that he has applied for voluntary retirement within the time prescribed and was eligible under the Scheme, but still the respondent-Bank has increased the cut off age from 40 years to 53 years vide Annexure P.8 and therefore, the action of the respondent-Bank in rejecting the claim of the petitioner is not tenable.

Clause 8 of the Scheme provides that the Bank has the sole discretion as to the acceptance and rejection of the retirement under the Scheme, depending upon the requirement of the Bank. For the purpose of exercising discretion in this regard, it was provided that category wise list of eligible employees would be prepared in descending order of their age and applications of employees coming in higher age groups and above cut-off age would be accepted and that the cut off age in each category will of course, depend upon the acceptable number of employees who can be permitted to retire. In terms of the said provision, it was decided to take the age of cut-off at 53 years for Officers' category by Circular Annexure P.8. The said decision of cut off is in terms of Clause 8 of the Scheme. Therefore, the petitioner cannot raise any claim for acceptance of his voluntary retirement.

In **Bank of India and others v. O.P. Swarankar etc. 2003(1) SLR 1,** it has been held by the Hon'ble Supreme Court that the Scheme is contractual in nature. The petitioner has submitted his offer for voluntary retirement. Such offer was required to be considered by the Bank

in terms of the Scheme. Clause 8 of the Scheme as reproduced above, gives discretion to the Bank to accept or reject the offer of the petitioner. It also deals with the preparation of category-wise list of the eligible employees in descending order of each category of staff. Therefore, by adopting such an exercise, the Bank has fixed the cut off age as 53 years. It is an offer which was required to be considered by the Bank, in terms of the Scheme. Since the Bank has considered the offer of the petitioner in terms of the Scheme, therefore, it cannot be said that the fixing of cut off age is such which can be said to be arbitrary or suffering from any patent illegality.

In view of the above, finding no merit in the present writ petition, the same is dismissed.

(HEMANT GUPTA)
JUDGE

December 21, 2007
ds

(MOHINDER PAL)
JUDGE